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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R. S .A. No. 3964 of 2007
Date of decision: 10.12.2007

Santosh Kumari and others **...Appellants**

Versus

Soman Devi and others **...Respondents**

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Rajeshwar Singh Thakur, Advocate for the appellants

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RAJESH BINDAL, J.

The defendants are in second appeal before this Court against concurrent findings of fact by both the Courts below whereby suit filed by respondent no.1/plaintiff for declaration to the effect that she is owner of the land described in the plaint was decreed.

The claim set up by the plaintiff in the suit was on the basis of first will dated June 10, 1986 executed by Bishamber Dass, father-in-law of the plaintiff, in her favour. The plaintiff is the only widow daughter-in-law of Bishamber Dass. On the other hand, defendants claimed ownership of the land relying upon second will dated January 29, 1988 whereby land in question was divided 1/3rd each between the plaintiff, two grand daughters and nephews (brother's sons). Bishamber Dass was resident of village Loley Nangal, Tehsil and District Gurdaspur. The first will was executed by him and got registered at Gurdaspur whereas the second will was registered at Amritsar. The mere fact that line was found mentioned in the second will about the alleged cancellation of first will, proved that execution of first will by Bishamber Dass was even admitted by the respondents. However, keeping in view the poor health and low vision of Bishamber Dass, nothing has come on record to prove as to why he travelled to Amritsar for execution of second will and got the same registered there. No good reason is forthcoming to justify the revocation of

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the first will depriving the natural heirs of the property, namely, widow of only predeceased son of Bishamber Dass for inheritance of the property and as against that bequeathing of property in favour of nephews.

The attesting witnesses to the second will were relations of the beneficiaries. Hence interested in the same. The first will was endorsed by Numberdar of the village to which Bishamber Dass belonged, who was 90 years of age and his testimony was rightly believed by the learned Courts below. As to why Bishamber Dass will let his nephews to inherit part of his property when they already inherited their share of property owned by their father is not forthcoming. Another suspicious circumstance, which resulted in execution of the second will at Amritsar, was that one of the beneficiary was residing there. Still further the Court found that all the new beneficiaries added to 1/3rd share in the property were not even residing in the village except one, so there arose no question of their serving the deceased Bishamber Dass, who was living with his own family, namely, daughter in law and grand daughters. No good reason is forthcoming as to why the testator will exclude persons from his natural line of succession especially when his son had already expired and his widow daughter in law was to support two daughters.

Even the expert produced by plaintiff proved that hand writing of testator Bishamber Dass on the second will was not his true and genuine writing, if compared with his normal hand writing. His testimony went unchallenged as it was only Ram Sarup, one of the defendants, who cross examined him and none else. Even other discrepancies were also found in the evidence led by the appellants/defendants.

Considering all these factors, the Courts below found that second will was surrounded by various suspicious circumstances whereas first will was duly proved on record and accordingly, the suit of respondent no.1/plaintiff was decreed.

Even before this Court learned counsel for the appellants has not been able to point out any material on record, which could lead to the conclusion that the findings recorded by learned Courts below are perverse. The contention that effort by execution of the second will was to retain the

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property in the family has no legs to stand. Even the property in terms of first will was inherited by widow daughter in law, the same remained in the family. Even as per the second will only 1/3rd property went to nephews, who had no concern with the property of Bishamber Dass. The findings recorded by both the Courts below are plain and simple findings of facts.

No substantial question of law arises in the present appeal and the same is dismissed.

December 10, 2007 **(Rajesh Bindal)**
Pka **Judge**